

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



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| LOS ANGELES UNIFIED SCHOOL DISTRICT, |) | |
| |) | |
| Employer, |) | Case No. LA-R-835 |
| |) | |
| and |) | Request for |
| |) | Judicial Review |
| SUPERVISORY EMPLOYEES UNION, |) | PERB Decision No. 424 |
| LOCAL 347, SEIU, AFL-CIO, |) | |
| |) | |
| Employee Organization. |) | PERB Order No. JR-13 |
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| LYNWOOD UNIFIED SCHOOL DISTRICT, |) | January 28, 1985 |
| |) | |
| Employer, |) | |
| |) | |
| and |) | Case No. LA-R-858 |
| |) | |
| SUPERVISORY EMPLOYEES UNION, |) | |
| LOCAL 347, SEIU, AFL-CIO, |) | |
| |) | |
| Employee Organization. |) | |
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Appearances; O'Melveny & Myers by Joel M. Grossman for Los Angeles Unified School District; Law Offices of Henry S. Barbosa by Douglas D. Barnes for Supervisory Employees Union, Local 347, SEIU, AFL-CIO.

Before Hesse, Chairperson; Tovar and Morgenstern, Members.

DECISION

MORGENSTERN, Member: Pursuant to section 3542(a) of the Educational Employment Relations Act (EERA),¹ the Los Angeles

¹The EERA is codified at Government Code section 3540 et seq.

Section 3542(a) provides, in pertinent part:

- (a) No employer or employee organization shall have the right to judicial review of a

Unified School District (LAUSD) requests that the Public Employment Relations Board (PERB or Board) join it in seeking judicial review of our Decision No. 424 and stay all proceedings in the case pending resolution of the appeal. Supervisory Employees Union, Local 317, SEIU, AFL-CIO (Local 347) does not oppose LAUSD's request for judicial review but urges that review should be limited to the LAUSD case in view of the fact that the Lynwood Unified School District has not sought review. Local 347, therefore, requests that we bifurcate the LAUSD case (LA-R-835) from the Lynwood Unified School District case (LA-R-858), with which it has been consolidated. Local 347 further objects to any stay of proceedings.

DISCUSSION

In the underlying decision, Los Angeles Unified School District/Lynwood Unified School District (10/24/84) PERB Decision No. 424, the Board affirmed the hearing officer's proposed decision finding that Local 347 is not the same employee organization as Los Angeles City and County School Employees Union, SEIU, Local 99 within the meaning of EERA

unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

section 3545(b)(2)² and, therefore, Local 347 is not precluded from representing a unit of supervisory employees who supervise rank-and-file classified employees represented by Local 99.

Accordingly, we ordered as follows:

Within thirty-five (35) days after this Decision is no longer subject to reconsideration, the Los Angeles Regional Director of the Public Employment Relations Board shall contact the parties regarding resolution of the outstanding unit issues, and elections will be conducted to determine whether Supervisory Employees Union, Local 347, SEIU, AFL-CIO, shall be the exclusive representative of the instant employees.

Request for Judicial Review

The Board has previously requested judicial review of the "same employee organization" issue in Fairfield-Suisun Unified School District, Sacramento City Unified School District, Los Angeles Community College District (6/18/80) PERB Order No. JR-8. This issue was found to be of special importance because: (1) it was a novel issue; (2) primarily involving construction of a statutory provision unique to EERA; and (3) was likely to arise frequently.

²Section 3545(b)(2) states:

A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

Clearly, since the same legal issue is involved in the instant case, our finding of special importance applies equally here. Inasmuch as the Supreme Court ordered unpublished the Court of Appeal decision which resulted from our previous request for judicial review of the issue,³ that decision may not be cited or relied upon.⁴ Thus, the existence of an unpublished Court of Appeal decision on the issue does not detract from its novelty or its "special importance."

Moreover, here, Local 347 essentially agrees that judicial review is preferable at this time. Given the parties' agreement and the importance of the issue, the Board grants LAUSD's request to seek judicial review.

Stay of Proceedings

LAUSD urges that, pending judicial review, we should stay all proceedings to enforce our order which directs that the Los Angeles regional director "shall contact the parties regarding resolution of the outstanding unit issues, and elections will be conducted"

³In the Los Angeles Community College District case, the Court of Appeal reversed the Board, holding, as a matter of law, that mere affiliation renders two organizations the same.

⁴Rule 977 of the California Rules of Court provides that an unpublished decision

shall not be cited or relied on by a court or a party in any other action except . . . where the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel.

Section 3542(a) expressly provides that "[a] board order directing an election shall not be stayed pending judicial review." This provision indicates a clear legislative intention that employees' right to select an exclusive representative should not be abridged or delayed, notwithstanding a pending appeal. We see no reason why unit determination proceedings preliminary to an election should be stayed where the election itself may not be stayed.

We, therefore, deny LAUSD's request for a stay of proceedings.

Severance

Lynwood Unified School District filed no exceptions to the hearing officer's proposed decision and, to date, has neither petitioned the Board to seek judicial review, indicated an intention to join in LAUSD's request, nor responded in any fashion to Local 347's request to sever the two cases. Neither has LAUSD offered any objection to the proposed severance.

We, therefore, grant Local 347's request and order the cases severed so that the unit determination and election can proceed expeditiously in the Lynwood Unified School District without unnecessary delay which may arise due to judicial proceedings in the LAUSD case.

ORDER

Based upon the foregoing, it is hereby ORDERED that:

1. Case No. LA-R-835 is hereby SEVERED from Case No. LA-R-858.

2. The request of the Los Angeles Unified School District that the Public Employment Relations Board join its request for judicial review of Los Angeles Unified School District/Lynwood Unified School District (10/24/84) PERB Decision No. 424 as it applies to Los Angeles Unified School District is GRANTED.

3. The request of the Los Angeles Unified School District that compliance with Decision No. 424 be stayed pending judicial review is DENIED.

Member Tovar joined in this Decision. Chairperson Hesse's concurrence and dissent begins on p. 7.

Hesse, Chairperson, concurring and dissenting: I concur with the majority insofar as it grants Los Angeles Unified School District's request to seek judicial review of PERB Decision No. 424 and denies Los Angeles Unified School District's request for a stay of proceedings. I dissent, however, as to the granting of Local 347's request that we bifurcate the Los Angeles Unified School District case (LA-R-835) from the Lynwood Unified School District case (LA-R-858).

These two cases were originally consolidated for hearing on March 9, 1982, because the same major issue was present in each: whether, under the EERA, two locals, affiliated with the same international union, are the same employee organization. On January 19, 1984, Local 347 petitioned the Board to bifurcate the cases. This petition was denied, ostensibly for the same reason the cases were originally consolidated.

Today, we have joined the Los Angeles Unified School District in seeking judicial review of Decision 424. In so doing, the majority acknowledges that the issue is novel and of special importance. Yet, the majority is severing the cases despite the harm and confusion that could result if the court reverses our underlying decision.

Despite Lynwood Unified School District's failure to file exceptions to the administrative law judge's proposed decision or to join in the request for judicial review, the cases should remain consolidated until final resolution of the "same employee organization" issue.